



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 6, 1992

Mr. Jeff Hankins  
Program Division, Legal Services 110-1C  
Texas Department of Insurance  
P. O. Box 149104  
Austin, Texas 78714-9104

OR92-138

Dear Mr. Hankins:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15012.

The Texas Department of Insurance (the department) received an open records request for copies of "all complaints/litigation on file" for a named insurance agency. You have submitted as responsive to the request copies of various correspondence, intra-agency memoranda, and investigators' notes from the department's file on the insurance agency in question. Although you originally contended that these documents come under the protection of sections 3(a)(1), 3(a)(3), 3(a)(7), and 3(a)(11) of the Open Records Act, you have informed this office that you now wish to withdraw your section 3(a)(3) claims.

Section 3(a)(11) of the act excepts interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the deliberative process. Open Records Decision No. 538 (1990). Section 3(a)(11) does not protect facts and written observation of facts and events that are severable from advice, opinions, and recommendation. Open Records Decision No. 450 (1986). Several of the documents that you have designated as being protected by section 3(a)(11) consist solely of factual information; section 3(a)(11) does not protect these documents. We have, however, marked one small segment of the internal memorandum dated October 15, 1991, that you may withhold pursuant to section 3(a)(11).

In Open Records Decision No. 429 (1985), this office indicated that information protected by section 3(a)(11) must be prepared by a person or entity with an official reason or duty to provide the information in question. *See also* Open Records Decision Nos. 283, 273 (1981). This helps assure that the information plays a role in the deliberative process; if it does not, it is not entitled to protection under section 3(a)(11). Open Records Decision No. 464 (1987) at 3. In this regard, we note that although some of the documents for which you assert the protection of section 3(a)(11) contain individuals' expressions of opinion, not all of those individuals were acting in an official capacity or at the behest of the department when they expressed the opinion. *Compare* Open Records Decision No. 466 (1987) (solicited opinions of character references contacted during applicant's background check). Accordingly, those individuals' opinions may not be withheld pursuant to section 3(a)(11).

We turn next to your section 3(a)(1) and 3(a)(7) claims. Although you raise the attorney-client privilege in the context of section 3(a)(1), this privilege is more properly deemed to be an aspect of section 3(a)(7) of the act, which protects, *inter alia*, information that the Rules and Canons of Ethics of the State Bar of Texas prohibit an attorney from releasing about his client. *See* Open Records Decision No. 574 (1990) (copy enclosed). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* Consequently, the privilege will protect only those communications between the department's attorney and its employees; communications between department employees and third parties fall outside the ambit of the privilege. *See* Tex. R. Civ. Evid. 503(b).

For this reason, the records reflecting the substance of conversations between department employees and parties outside the department are not within the attorney-client privilege. We have marked for your convenience the portions of the intra-agency memoranda dated January 2, 1991, and January 4, 1991, that may be withheld pursuant to section 3(a)(7). The remaining portions of the documents submitted to this office must, however, be released except for the small portion of the memorandum dated October 15, 1991, which comes under the protection of section 3(a)(11).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR92-138.

Yours very truly,



William Walker  
Assistant Attorney General  
Opinion Committee

WW/RWP/lmm

Ref.: ID# 15012  
ID# 15352  
ID# 15186

Enclosures: Open Records Decision No. 574

cc: Ms. Margaret Gosselink  
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